Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF MISSISSIPPI, ST. JAMES CHURCH, AND JERRY MCBRIDE,

Petitioners,

v.

JULIE MABUS,

Respondent.

On Petition For Writ Of Certiorari To The Hinds County Circuit Court Of Mississippi, First Judicial District

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is a civil suit against a member of the clergy, and the religious organization of which he is a member, for not following ecclesiastical laws and canons, outside the subject-matter jurisdiction of the civil courts and barred because of the Religion Clauses of the First Amendment?

2. Is the imposition of a special duty by a civil court on a member of the clergy and/or religious organization, based solely on religious status or affiliation, a violation of the Religion Clauses of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment?

LIST OF PARTIES

In the proceedings below, Respondent named the Episcopal Diocese of Mississippi, Inc. as a party to the action. The proper name and title of this Petitioner is the Protestant Episcopal Church in the Diocese of Mississippi. Respondent also named St. James Episcopal Church as a party to the action. The proper name of this Petitioner is St. James Church. The only other parties to the proceeding in the court below not named in this Petition are John Does 1-10.

CORPORATE DISCLOSURE STATEMENT

The boundaries of the Protestant Episcopal Church in the Diocese of Mississippi ("Diocese") are co-extensive with the boundaries of the State of Mississippi. The Diocese is an ecclesiastical body that is operated exclusively for religious purposes. It is not incorporated; instead, it is an affiliated diocese and institution that is a subordinate unit of, and in canonical union with, the Protestant Episcopal Church in the United States of America.

St. James Church is a Mississippi, non-profit corporation. St. James Church is not a publically held corporation and has no parent corporation.

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PETITION FOR WRIT OF CERTIORARI

The Protestant Episcopal Church in the Diocese of Mississippi, St. James Church, and Jerry McBride respectfully submit this Petition for a Writ of Certiorari to review the order of the Circuit Court of Hinds County, Mississippi, First Judicial District in this case.

OPINIONS BELOW

The orders of the Mississippi Supreme Court (App. at 7-11) and the Circuit Court of Hinds County, Mississippi, First Judicial District (App. at 1-6) are unreported and do not contain opinions. The dissenting justices of the Mississippi Supreme Court issued a separate, unreported statement on the initial denial of the interlocutory appeal. (App. at 8-10)

JURISDICTION

The Hinds County Circuit Court of Mississippi, First Judicial District, denied Petitioners' Motion to Dismiss on August 15, 2001 and entered an order to that effect on August 27, 2001. (App. at 1) Petitioners sought interlocutory appeal from the Mississippi Supreme Court asserting the violation of their First Amendment and Fourteenth Amendment rights that would exist if Respondent's lawsuit continued. The Mississippi Supreme Court, in a four to four ruling, entered its Order denying Petitioners' Petition for Interlocutory Appeal on November 29, 2001, (App. at 7) and entered its Order denying reconsideration

of that Order on January 7, 2002. (App. at 11) The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. I. (App. at 13)

Section one of the Fourteenth Amendment states:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV. (App. at 13)

STATEMENT OF PERTINENT FACTS, COURSE OF PROCEEDINGS, AND DISPOSITION BELOW

Respondent Julie Mabus (hereinafter referred to as "Ms. Mabus") has filed suit against Petitioners, her priest, Jerry McBride (individually hereinafter referred to as "the Priest"), her church, Saint James Church (individually hereinafter referred to as "the Church"), and the Protestant Episcopal Church in the Diocese of Mississippi (individually hereinafter referred to as "the Diocese") alleging claims for breach of fiduciary duty, fraudulent concealment, negligent misrepresentation, negligent infliction of emotional distress, and clergy malpractice against the Priest and vicarious liability for these claims against the Church and the Diocese. (App. at 14) She also alleges direct claims against the Church and the Diocese for negligent retention/supervision and clergy malpractice. All of these claims are based on the allegation that the Priest failed to inform Ms. Mabus that her then husband, former Mississippi Governor Ray Mabus, had told the Priest he was going confront Ms. Mabus with some marital difficulties and tape the conversation with Ms. Mabus. Mr. Mabus invited the Priest to be present when the conversation occurred. Mr. Mabus recorded the conversation without Ms. Mabus' knowledge. Ms. Mabus alleges that during a subsequent divorce proceeding, Mr. Mabus' expert psychologist used the transcript of that conversation as part of his basis to form his opinion as to who should receive custody of their two children. (App. at 14)

There is no doubt Ms. Mabus bases her claims upon the religious status of Petitioners, and that it is Ms. Mabus' intent to have a civil court interpret the religious

doctrine and canons of the Episcopal church as a basis for liability. Ms. Mabus has stipulated in a court hearing that but for the religious status of Petitioners "there would be no case here."[1] Importantly, it is neither unlawful nor tortious under Mississippi law to record secretly a conversation without another's consent or to not disclose someone else is taping. *Attorney M. v. The Mississippi Bar*, 621 So. 2d 220 (Miss. 1992) (See also App. at 26). Furthermore, Ms. Mabus' Complaint in this matter is replete with allegations that the Priest owed Ms. Mabus, *as well as all of his other parishioners*, a special civil, legal duty of confidentiality and care *because of* his status as a priest and his ecclesiastical responsibilities,[2] while Ms. Mabus'

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[1] Quoting Ms. Mabus' counsel, "They've [(counsel for Petitioners)] suggested to the Court that if a neighbor or a friend had been at the meeting [instead of a priest] that there would be no case here. *We certainly agree with that.*" (App. at 26) (emphasis added).

[2] The following extracts of Ms. Mabus' Complaint are just a few examples to demonstrate that her Complaint is premised upon the assumption that one's ecclesiastical duties or religious affiliation creates special legal duties are as follows:

> 15. Father McBride's ***position as priest*** of St. James Episcopal Church ***placed him in a special relationship of trust and faith with his parishioners.***

(App. at 17) (Specifically alleging that it is the Priest's position as a priest that places a special legal duty upon him as toward **all of his parishioners.**)

> 36. Defendants St. James and Diocese knew or should have known that Father Jerry McBride ***could not be trusted to follow the Cannons of the Episcopal religion and maintain the confidence and/or trust of parishioners.***

Complaint contains no other factual basis that would give rise to a special duty of confidence or care.[3] In addition,

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(App. at 21) (Specifically alleging that it was the Priest's priestly duties that were breached.)

> 37. Despite Defendants' St. James and Diocese's knowledge, they failed to take appropriate steps to supervise Father McBride's ***interaction with parishioners and they continued to enable his service as the spiritual leader*** of St. James Episcopal Church.

(App. at 21) (Relying on the fact that the Priest was a spiritual leader during the alleged acts.)

> 40. Father McBride's acts in violating the trust and confidentiality ***of a parishioner*** by permitting surreptitious taping of a confidential counseling session by a third party and his failure to address the parishioner's distress resulting from ***the priest's betrayal violated the generally accepted standards of care adopted by clergy professionals and constituted clergy malpractice.***

(App. at 21-22) (Alleging a duty owed to parishioners, in general, as the basis for the Complaint, specifically stating that it is the Priest's position as a member of the clergy that was breached.)

[3] If Ms. Mabus' claims were not based purely upon these Petitioners' "status," Ms. Mabus has had ample opportunity to amend her Complaint to include additional facts upon which her claims are based. Furthermore, the state court could have dismissed this lawsuit without prejudicing Ms. Mabus, had Ms. Mabus merely drafted her Complaint erroneously, because Rule 15 of the Mississippi Rules of Civil Procedure provides, "On sustaining a motion to dismiss for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6), or for judgment on the pleadings, pursuant to Rule 12(c), thirty days leave to amend shall be granted. . . . " Miss. R. Civ. Pro. R. 15. Moreover, Mississippi law requires a plaintiff to specifically plead the facts upon which a special fiduciary duty is based. *See Wilbourn v. Stennett, Wilkinson & Ward*, 687 So. 2d 1205, 1216

counsel for Ms. Mabus also has expressly represented that they intend to probe into these Petitioners' religious beliefs and the content of Petitioners' religious canons during discovery and the trial of this matter to define the appropriate standard of care for Episcopal priests.[4] Counsel for Ms. Mabus is currently pursuing the deposition of the Bishop and several other Episcopal priests for this very purpose. (App. at 28-30)

Petitioners moved to dismiss the suit in the Hinds Circuit Court of Mississippi, First Judicial District, asserting among other things, that the First Amendment bars a civil court from adjudicating the interpretation and application of religious doctrines and beliefs as well as the polity of religious organizations. Without an opinion, the circuit court denied the motion to dismiss and a request for reconsideration. (App. at 1-4)

Interlocutory review of the circuit court's order was sought from the Mississippi Supreme Court along with a

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(Miss. 1996). Since no other facts are pled that would give rise to a special fiduciary duty, there is no doubt that it is religious status alone upon which Ms. Mabus bases her claims.

[4] Quoting Ms. Mabus' counsel,

> [W]hether the conduct at issue in this case involves the interpretation of religious doctrine . . . we establish that by them calling their witnesses up there and saying, oh, whether or not to reveal the confidences of a confession, that's purely a church matter, and then we call experts that get up there, Episcopalian experts that understand and are familiar with their doctrines, and say, well, no actually, it's just the opposite. . . .

(App. at 26)

request for a stay of proceedings before the circuit court pending the appeal. In addition to the constitutional and other arguments, Petitioners also contended that to permit the court proceedings to go forward through discovery and a trial would unconstitutionally entangle the court in religious doctrine and polity for which Petitioners would have no ability to undo.

On November 29, 2001, the Mississippi Supreme Court handed down an evenly divided opinion. (App. at 7-10) Four justices voted to grant the relief requested, four justices voted to deny the requested relief, and one justice recused himself. The Mississippi rules require that a majority of justices vote for interlocutory relief for it to be granted; thus, the decision denied Petitioners' Petition for Interlocutory Appeal and Petition for Stay of Proceedings. No opinion accompanied the court's denial of the Petitions; however, the four justices in favor of granting the interlocutory appeal and petition for stay issued a Statement on Order (authored by Chief Justice Pittman of the Mississippi Supreme Court) stating, in part:

> It appears now that discovery, including the deposition of several priests and the bishop, is underway.
>
> . . .
>
> This is certainly not just another defendant. We should not open the Church and its priests and ministers to ordinary malpractice suits. *The order here entered allows the plaintiff to conduct discovery in regard to St. James Church activities, management and personnel, and further allows, without restraint, the plaintiff to employ discovery of the dioceses and its activities. No harm could come from*

> *allowing this Court to rule on the fundamental legal questions at this stage. Harm may result if the respondent is allowed to prowl the internal operations of this or any church in an action for which the law may ultimately be determined to offer no legal cause of action.* An interlocutory appeal should be granted to first determine Mississippi's law with regard to the questions raised and to avoid possible harmful unrestricted discovery and depositions of church life.

(App. at 9) (emphasis added). Petitioners sought discretionary reconsideration of the court's November 29, 2001 Order, which was also denied without opinion by Order dated January 7, 2002. (App. at 11) At this point, Petitioners have exhausted all avenues for relief in the court below.

For the reasons set forth herein, the denial of interlocutory review by the Mississippi Supreme Court was a final order reviewable by this court under 28 U.S.C. § 1257, in accordance with *Cox Broadcasting Corp. v. Cohen*, 420 U.S. 469, 479-83 (1975) (stating an order is final under 28 U.S.C. § 1259 even though further proceedings may take place in the lower court under circumstances where a federal issue can not be resolved at the end of the lower court proceedings without impairing federal rights).

REASONS FOR GRANTING WRIT

I. THE WRIT SHOULD BE GRANTED BECAUSE CIVIL COURTS ARE FORBIDDEN FROM ADJUDICATING WHETHER ECCLESIASTICAL LAWS AND POLICIES HAVE BEEN VIOLATED

The writ should be granted because this suit against Petitioners is a direct challenge to this Court's established

precedent holdings that civil courts may "exercise no jurisdiction" over "a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standards of morals required of them" because such would require "the civil courts . . . to inquire into . . . the whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination." *Watson v. Jones*, 80 U.S. 679, 733 (1871); *see also Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 116 (1952) (the First Amendment confers a "power [for religious bodies] to decide for themselves free from matters of church government, as well as those of faith and doctrine."); *Serbian Orthodox Diocese v. Milivojevich*, 469 U.S. 696, 709 (1976) (for "civil courts to analyze whether ecclesiastical actions are in accordance with 'canon or ecclesiastical law' is exactly the inquiry the First Amendment prohibits.").

Because the claims of Ms. Mabus are grounded on alleged violations of ecclesiastical laws and policies, and not on any violation of civil law, the First Amendment provides absolute immunity to liability. This immunity is effectually lost, however, if the Priest, the Church and the Diocese are subjected to the burdens of broad and reaching discovery into church doctrines and practices and a trial involving the same. *Id.; c.f. Mitchell v. Forsythe*, 472 U.S. 511, 524 (1985) (holding that immunity matters are treated as orders "appealable before final judgment" to avoid nullifying the immunity). As such, to protect Petitioners' basic constitutional rights, it is necessary that the Writ be granted at this time.

Moreover, the prohibition against civil courts interpreting religious doctrine applies, in order to avoid excessive entanglement of the state with religion, even if such is for a legitimate state interest. As an example, States have a legitimate, secular interest in seeing that disputes over property are peacefully resolved. Yet, in property dispute cases, this Court has held, that "the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice." *Jones v. Wolf*, 443 U.S. 595, 602 (1979); *see, e.g., Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 710 (1976); *Maryland & Va. Churches v. Sharpsburg Church*, 396 U.S. 367, 368 (1970); *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449 (1969). No such state interest exists in the case *sub judice*, yet Mississippi's encroachment on the doctrines and practices of the Church and the Diocese is far greater than that allowed in cases involving church property disputes. If the state can not interpret religious doctrine to resolve property disputes, then surely the state can not interpret religious doctrine to say whether a clergy person, a church or a diocese acted properly.

In sum, regardless of the ultimate outcome, litigation of their religious canons and practices violates Petitioners' religious freedoms. These violated rights can only be protected if this Court grants Petitioners' Writ at the present time.

II. THE WRIT SHOULD BE GRANTED BECAUSE THE FIRST AMENDMENT PROHIBITS SINGLING OUT RELIGIOUS INSTITUTIONS AND CLERGY FOR SPECIAL CIVIL DUTIES BECAUSE OF THEIR RELIGIOUS STATUS

The Writ should also be granted because this Court has long held that special duties or burdens can not be placed on institutions or persons because of religious status. *See McDaniel v. Paty*, 435 U.S. 618 (1978) (striking down Tennessee law prohibiting a member of the clergy from holding elected office). As stated by this Court in *Board of Educ. of Kiryas Joel Village Sch. Dist. v. Grumet*, 512 U.S. 687, 698 (1984),

> [R]eligious people (or groups of religious people) cannot be denied the opportunity to exercise the rights of citizens *simply because of their religious affiliations* or commitments, for such a disability would violate the right to religious free exercise, which the First Amendment guarantees as certainly as it bars any establishment.

Id. (emphasis added); *see, e.g., McDaniel*, 435 U.S. 618. "[A] law targeting religious beliefs as such is never permissible." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 523 (1993); *see, e.g., Braunfeld v. Brown*, 366 U.S. 599, 607 (1961) (plurality opinion); *Fowler v. Rhode Island*, 345 U.S. 67, 69-70 (1953); *McDaniel*, 435 U.S. at 626 (plurality opinion). In this case, it is stipulated that there is no legal prohibition against non-clergy persons doing the same acts of which Ms. Mabus complains. As such, allowing Ms. Mabus' lawsuit would be the same as saying that religious institutions and their clergy have inferior rights (in the form of greater duties) simply

"because of their religious affiliation and commitments," contrary to the clear import of this court's previous rulings. *Id.*

In general, the Free Exercise Clause requires that a law be neutral and of general applicability or be justified by a compelling government interest, which will be strictly scrutinized by the courts.[5] *Employment Div. Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872, 893 (1990). "[T]he minimum requirement of neutrality is that a law not discriminate on its face. A law lacks facial neutrality if it refers to a religious practice without a secular meaning discernable from the language or context." *Church of the Lukumi Babalu Aye, Inc.*, 508 U.S. at 533; *see, e.g., Smith*, 494 U.S. at 878-79. Obviously, a common law rule that allows the targeting of religious status and affiliation for a special standard or duty of care is not facially neutral. To the contrary, the civil liability Ms. Mabus impermissibly seeks to impose is "because of, not merely in spite of," religious status and affiliation of these Petitioners. *See Church of the Lukumi Babalu Aye, Inc.*, 508 U.S. 520 (citing *Personnel Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279, n. 24 (1979)). Because the decisions of the Court below selectively impose duties on Petitioners based solely upon their religious status, when the same burdens are not imposed on others similarly situated, the duties are neither neutral as to religion, or generally

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[5] The "neutrality" and "general applicability" requirements sometimes differ in application, but usually overlap. *See Church of the Lukumi Babalu Aye, Inc.*, 508 U.S. 520. Such is the situation herein; so Petitioners will discuss the two requirements together.

applicable. *Id.* at 543. Thus, the lower courts' decisions are in violation of this Court's neutrality requirement.

There is no compelling state interest that would allow the singling out of religious entities and members of the clergy for specialized civil duties of care.

> A law that targets religious conduct for distinctive treatment or advances legitimate governmental interests only against conduct with a religious motivation will survive strict scrutiny only in rare cases.

Church of the Lukumi Babalu Aye, Inc., 508 U.S. 520; *see also Thomas v. Review Bd. of Indiana Employment Sec. Div.*, 450 U.S. 707, 718 (1981); *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972). Ms. Mabus has never asserted, and the lower courts in this case have never articulated, a state interest furthered through the imposition of this higher duty of care. Petitioners submit there is no state interest that would transform this matter into one of those "rare cases" in which a state interest survives strict scrutiny. *Id.*

III. THE WRIT SHOULD BE GRANTED BECAUSE NUMEROUS DECISIONS ACROSS THE COUNTRY REFLECT A CONFLICT ON THE SCOPE OF FIRST AMENDMENT PROTECTIONS IN CASES INVOLVING THE CONDUCT OF RELIGIOUS INSTITUTIONS AND CLERGY

The Writ should be granted because the decisions below conflict with most authority from other lower courts, and because granting the Writ would allow this Court to provide guidance to the lower courts on a fundamental constitutional issue that has arisen repeatedly.

Numerous courts, both state and federal, have been confronted with claims similar to the claims presented herein. The claims are often presented under varying titles, but all invariably involve courts determining how the First Amendment applies when religious practices are singled out for special duties, or whether a civil court can address ecclesiastical beliefs and doctrines.

When a claim is styled as one of clergy malpractice, lower courts outside of Mississippi have consistently declined to recognize the claims based upon First Amendment grounds.[6] As one court explained:

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[6] *See, e.g., Borchers v. Hrychuk*, 126 Md.App. 10, 23-24, 727 A.2d 388, 392 (Md.App.1999); *Doe v. Evans*, 718 So. 2d 286, 291 (Fla. App. 1998) (holding, "First Amendment bars claims for clergy malpractice because such a claim requires a court to determine 'whether the adherent of a particular faith has properly interpreted the tenets of that faith.' "); *Langford v. Roman Catholic Diocese of Brooklyn*, 705 N.Y.S.2d 661, 663 (N.Y. 2000) ("[A]ny attempt to define the duty of care owed by a member of the clergy to parishioner fosters 'excessive entanglement with religion'.") (*Joshua S. v. Casey*, 206 A.D.2d 839; *Schmidt v. Bishop*, 779 F. Supp. 321 (S.D.N.Y. 1991)); *Handley v. Richards*, 518 So. 2d 682 (Ala. 1987); *Byrd v. Faber*, 565 N.E.2d 584 (1991); *Strock v. Pressnell*, 527 N.E.2d 1235 (1988); *Schieffer v. Catholic Archdiocese*, 508 N.W.2d 907 (Neb. 1993); *Amoto v. Greenquist*, 679 N.E.2d 446, 450 (Ill. App. 1 Dist. 1997) ("To permit claims for clergy malpractice would require courts to establish a standard of reasonable care for religious practitioners practicing their respective faiths, which necessarily involves the interpretation of doctrine."); *Braumgartner v. First Church of Christ Scientist*, 490 N.E.2d 1319 (1986); *Moses v. Diocese of Colorado*, 863 P.2d 310 (Colo. 1993); *Destefano v. Grabrian*, 763 P.2d 275 (Colo. 1998); *Bladen v. First Presbyterian Church of Sallisaw*, 857 P.2d 789 (Okl. 1993); *Fontaine v. Roman Catholic Church of Archdiocese of N.O.*, 625 So. 2d 548

> [S]uch a claim requires definition of the relevant standard of care. Defining that standard could embroil courts in establishing the training, skill, and standards applicable for members of the clergy in a variety of religions with widely varying beliefs. Furthermore defining such a standard would require courts to identify the beliefs and practices of the relevant religion and then to determine whether the clergyman had acted in accordance with them. The entanglement could restrain the free exercise of religion.

Teadt v. Lutheran Church Missouri Synod, 603 N.W.2d 816, 822 (Mich. App. 1999). However, the lower courts' rulings in the case *sub judice* refuse to recognize the unanimous reasoning of the courts across the country and allow Respondent to proceed on her claim of clergy malpractice against McBride, the Church, and the Diocese.

With claims styled as breach of fiduciary duty, the decisions in the courts have not been as uniform.[7] At least

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(La. App. 1993); *E.J.M. v. Archdiocese*, 622 A.2d 1388 (P.A. Super. 1993); *Teadt v. Lutheran Church Missouri Synod*, 603 N.W.2d 816, 822 (Mich. App. 1999).

[7] Many of the courts on both sides of the First Amendment issue have also struggled to determine if a claim for breach of fiduciary duty is essentially another way of stating a claim for clergy malpractice, which has been universally rejected on First Amendment grounds, and if not, whether the First Amendment is applied differently to the different claims. Some courts have found that claims for breach of fiduciary duty and clergy malpractice are distinguishable but still allowed a First Amendment bar for claims of breach of fiduciary duty under the facts before them. *See, e.g., Doe v. Baker*, 2000 WL 38445 *8 (Conn. Super. 2000) (distinguishing between claims for clergy malpractice and breach of fiduciary duty, "[A] fiduciary or confidential relationship is characterized by a unique degree of

two federal circuit courts of appeal have reached differing results when addressing this issue.[8] However, a

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trust and confidence between the parties, one of whom has superior knowledge, skill or expertise and is under a duty to present the interest of the other. Professional negligence implicates a duty of care, while breach of fiduciary duty implicates a duty of loyalty and honesty."); *Doe v. Evans*, 718 So. 2d 286, 291 (Fl. App. 1998); *Doe v. Hartz*, 52 F. Supp.2d 1027 (N.D. Iowa 1999). Others have held that a claim for fiduciary duty is just another way of claiming clergy malpractice and refuse to entertain such claim. *See, e.g., Dausch v. Rykse*, 52 F.3d 1425 (7th Cir. 1994); *Teadt v. Lutheran Church Missouri Synod*, 603 N.W.2d 816, 822 (Mich. App. 1999).

[8] *See Dausch v. Rykse*, 52 F.3d 1425 (7th Cir. 1994); *Martinelli v. Bridgeport Roman Catholic Diocesan Corp.*, 196 F.3d 409 (2d Cir. 1999). In *Dausch v. Rykse*, the Court of Appeals for the Seventh Circuit refused to allow a claim for breach of fiduciary duty against a pastor and church defendants, recognizing First Amendment protections. The court reasoned,

> If the court were to recognize such a breach of fiduciary duty, it would be required to define a reasonable duty standard and to evaluate Rykse's conduct against that standard, an inquiry identical to that which Illinois has declined to undertake in the context of a clergy malpractice claim and one that is of doubtful validity under the Free Exercise Clause.

Dausch, 52 F.3d at 1438-9. In *Martinelli v. Bridgeport Roman Catholic Diocesan Corporation*, the Court of Appeals for the Second Circuit found that the First Amendment did not bar a claim for breach of fiduciary duty against a diocese. *Martinelli*, 196 F.3d at 430-31. The court found that there was ample evidence apart from the evidence of a religious nature to conclude that a fiduciary duty existed; however, it recognized a distinction between "the proper use of religious principles as facts and an improper decision that religious principles are true or false" and allowed evidence of religious matters to prove the existence of a fiduciary duty. *Id.*

majority of courts hold that attempting to define the relationship between a priest and a parishioner, and the duty ultimately owed in such relationship, excessively entangles the court in religious matters and inhibits the free exercise of religion, taking it into territory forbidden by the First Amendment.[9] A small minority of courts

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[9] *See, e.g., Doe v. Baker*, 2000 WL 38445 (Conn. Super. 2000); *DeCorso v. Watchtower Bible & Tract Society of New York*, 2000 WL 1687110 (Conn. Super. 2000); *Doe v. Evans*, 718 So. 2d 286, 293 (Fl. App. 1998) (holding "[C]hurch's policies undoubtedly differ from the rules of another employer, and may require the nonsecular employer to respond differently when faced with such allegations. When a secular court interprets church law, policies, and practices it becomes excessively entangled in religion"); *Dausch v. Rykse*, 52 F.3d 1425 (7th Cir. 1994); *Amoto v. Greenquiest*, 679 N.E.2d 446, 454 (Ill. App.3d 1997) (holding "Although we agree . . . that the relationship between a cleric and parishioner reflects many aspects of a fiduciary one, we hold that under Illinois law, a contention that a cleric has breached his duty as a fiduciary is not actionable. We believe that when a parishioner lodges such a claim, religion is not 'merely incidental' to a plaintiff's relationship with a defendant, it is the foundation for it."); *Doe v. Hartz*, 52 F. Supp.2d 1027, 1064 (N.D. Iowa 1999) (holding "[S]tatus as a priest, standing alone, . . . is [not] enough to establish a fiduciary duty to all and sundry to refrain from certain conduct."); *Dushkin v. Desai*, 18 F. Supp.2d 117, 122 (D. Mass. 1998) (holding "[T]his court declines to expand Massachusetts doctrine to encompass a fiduciary duty owed persons by their spiritual or religious advisors based on the spiritual nature of the relationship alone."); *Teadt v. Lutheran Church Missouri Synod*, 603 N.W.2d 816, 822 (Mich. App. 1999) (holding "First, such a claim requires definition of the relevant standard of care. Defining that standard could embroil courts in establishing the training, skill, and standards applicable for members of the clergy in a variety of religions with widely varying beliefs. Furthermore, defining such a standard would require courts to identify the beliefs and

have upheld claims against clergy for breach of fiduciary duty toward their parishioners, finding that they could determine the existence of such a relationship without reference to religious doctrine.[10]

The general rule in courts across the country addressing the First Amendment implications involved in allowing a claim for negligent hiring, retention and supervision of clergy is that the First Amendment forecloses all claims against religious entities.[11] A clear

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practices of the relevant religion and then to determine whether the clergyman had acted in accordance with them. The entanglement could restrain the free exercise of religion."); *Langford v. Roman Catholic Diocese of Brooklyn*, 705 N.Y.S.2d 661 (N.Y. A.D. 2000); *Schmidt v. Bishop*, 779 F. Supp. 321, 326 (S.D.N.Y. 1991) (holding "[I]n analyzing and defining the scope of a fiduciary duty owed persons by their clergy, the [c]ourt would be confronted by the same constitutional difficulties encountered in articulating the generalized standard of care for a clergyman required by the law of negligence.") *Hodges v. Kleinwood Church of Christ*, 2000 WL 994337 (Tex. App. 2000); *Hawkins v. Trinity Baptist Church*, 30 S.W.3d 446 (Tex. App. 2000).

[10] *See, e.g., Moses v. Diocese of Colorado*, 863 P.2d 310 (Col. 1993) (allowing claim for breach of fiduciary duty where a priest had sex with a parishioner who had a personality disorder); *F.G. v. McDonnell*, 696 A.2d 697 (N.J. 1997) (remanded for a determination of whether it would cause excessive entanglement to determine if sexual misconduct of priest violated a fiduciary duty); *Martinelli v. Bridgeport Roman Catholic Diocesan Corp.*, 196 F.3d 409 (2d Cir. 1999) (involving sexual misconduct).

[11] *See, e.g., Dausch v. Rykse*, 52 F.3d 1425 (7th Cir. 1994); *Ayon v. Gourley*, 47 F. Supp.2d 1246 (D. Colo. 1998); *Schmidt v. Bishop*, 779 F. Supp. 321 (S.D.N.Y. 1991); *Hodges v. Kleinwood Church of Christ*, 2000 WL 994337 (Tex. App.); *Doe v. Evans*, 718 So. 2d 286 (Fl. App. 1998); *Gibson v. Brewer*, 952 S.W.2d 239 (Mo. 1997);

example of the reasoning applied by these courts can be found in *Ayon v. Gourley,* where the District Court for the Federal District of Colorado held that both the Free Exercise and Establishment Clauses would be violated by allowing a claim for negligent supervision and retention of a priest by a church defendant.[12]

Germain v. Pullman Baptist Church, 980 P.2d 809 (Wash. App. 1999); *Beach v. J. Jean,* 746 A.2d 228 (Conn. 1999).

[12] Quoting from the court's opinion in *Ayon v. Gourley,*

> [T]he [c]ourt finds that [p]laintiff's negligent hiring claim would violate both the Free Exercise and Establishment Clauses. Like the majority of the cases cited, this [c]ourt finds that consideration of the hiring policies of the [a]rchdiocese [d]efendants would inevitably require examination of church policy and doctrine. The choice of individuals to serve as ministers is one of the most fundamental rights belonging to a religious institution. It is one of the most important exercises of a church's freedom from government control. For this [c]ourt to insert itself into the process by which priests are chosen would substantially burden the [d]efendants' free exercise of a crucial power to control the future of the church and therefore constitute interference with the practice of their religion.
>
> It would also cause excessive entanglement in church operations by fostering inappropriate government involvement. The application of even general tort law principles to church procedures on the choice of priests would require an inquiry into present practices with an intent to pass on their reasonableness. Such court examination and oversight of internal church policies would constitute an encroachment on the church's religious function. . . .

In summary, due to the number of times the issue has arisen, and because the First Amendment is invariably implicated, either expressly or implicitly, the granting of this Petition would not only uphold Petitioners' First Amendment Rights, but would also provide useful guidance to federal and state courts by clarifying the scope and application of the First Amendment in such cases.

IV. THE WRIT SHOULD BE GRANTED TO PREVENT IRREPARABLE HARM AND BECAUSE OF THE IMPORTANCE OF THE ISSUES PRESENTED

The pleadings and records before the Mississippi courts make clear: (1) that interpretation of religious doctrine and belief is necessary to adjudicate Ms. Mabus' claims and (2) that Ms. Mabus' claims are based exclusively upon Defendants' religious status. As set forth above, adjudication of ecclesiastical claims is outside the jurisdictional scope of civil courts, the interpretation of

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> While [p]laintiff attempts to characterize this as a normal supervision claim, the reality is that practices of disciplinary actions, reprimand write-ups and grievance procedures are improbable in a church setting. Instead, like the hiring claim, the procedures that the [a]rchdiocese [d]efendants have in place regarding supervision would have to be examined to determine whether they were reasonable and adequate. This would clearly be inappropriate governmental involvement and a burden on these [d]efendants' exercise of religion. Consequently, [p]laintiff's claims against the [a]rchdiocese [d]efendants must be dismissed as violative of the First Amendment.

Ayon v. Gourley, 47 F. Supp.2d 1246, 1250-51 (D. Colo. 1998).

ecclesiastical doctrine results in excessive entanglement, and religious persons and institutions may not, consistent with the Religion clauses, be held to a special standard of care based solely upon religious status.[13] Petitioners have exhausted all avenues of relief below. Therefore, granting the Writ is necessary to preclude irreparable harm.

Moreover, the opinions of the courts below in this case (if not corrected) will have an expansive impact on the religious freedoms of every individual throughout the State of Mississippi. These decisions not only affect these Petitioners or the Episcopal churches and/or dioceses but every clergy or person holding a position of religious importance and every religious sect or organization upon whom the Mississippi state courts may assume jurisdiction. As pointed out by Mississippi's Chief Justice, these decisions allow religious status and affiliation to thrust upon every individual and entity, within the jurisdiction of Mississippi, civil duties and liabilities, above and beyond those of ordinary citizens, and provide courts the authority to probe into religious doctrines, polity, and beliefs to interpret whether clergymen and religious entities acted in accordance therewith.

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[13] Plaintiff's theory of civil liability is based on, or purportedly based on, state common law. Such constitutes state action for purposes of the Fourteenth Amendment. As this Court has held, "Our cases teach that the application of state rules of law in state courts in a manner alleged to restrict First Amendment freedoms constitutes 'state action' under the Fourteenth Amendment." *Cohen v. Cowles Media Co.*, 501 U.S. 663, 668 (1991) (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 265 (1964); *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 916 (1982); *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 777 (1986)).

The enormity of the infringement on religious freedoms that the precedent of the Mississippi courts' decisions allow can not be overstated. The decisions of the Mississippi courts place special burdens on religion, and have the practical effect of allowing the courts, rather than the religious entities, to make, interpret, regulate and apply ecclesiastical law specifically applicable to persons and entities associated with religious organizations. Allowing a civil state court to define and apply a standard of conduct for all clergy, or the particular standard of conduct applicable to a particular religious sect, allows direct state regulation of religion; or, put another way, the "establishment" of a state controlled church. If the decisions below are allowed to stand, religious bodies, whether Episcopal, Baptist, Catholic, Methodist, Jewish, Muslim, Buddhist, or other, would find themselves forced to study civil law, as opposed to their religious scripture and internal documents, to determine the correctness of their religious behavior. Furthermore, they would continually be faced with the real probability: (1) that they may be mandated to testify on the record in civil courts with regard to those doctrines, practices and actions, or lack thereof; (2) that such could be admissible at trial; and (3) that such could be used against them to impose legal liability. Such a climate would clearly chill religious expression and conduct in general and specifically, in this case, cause this Diocese and the Church to avoid interpreting their own religious doctrines during the pendency of this litigation, regardless of the ultimate outcome.

Finally, and most importantly, the decisions of the Mississippi courts below fly in the face of the longstanding historical precedent in this country that clergy and religious bodies, while subject to general laws applicable to all, answer to their God, not the state, in matters particular to their religious calling. Thus, it is of prime importance that this Court take this opportunity to provide direction to these courts and restore the First Amendment rights of these Defendants before these rights are further breached and irreparably harmed.

CONCLUSION

For the forgoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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IN THE CIRCUIT COURT OF
HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

JULIE MABUS — PLAINTIFF

V. — CAUSE NO. 251-01-23CIV

ST. JAMES EPISCOPAL CHURCH, *et al* — DEFENDANTS

ORDER

THIS CAUSE having come on for hearing on the Defendants' Revised Motion to Dismiss for Failure to State a Claim, and the Court, having considered the briefs and argument of counsel for the parties, grants the motion in part and denies the motion in part.

IT IS, THEREFORE, ORDERED as follows:

That the plaintiff's claim for invasion of privacy has been conceded by the plaintiff as being time-barred and it is hereby dismissed with prejudice. Each party is to bear their own costs.

That the Motion to Dismiss is denied with respect to all of the plaintiff's remaining claims.

That the order staying discovery pending a ruling on the Motion to Dismiss is lifted and, thus, discovery may commence.

SO ORDERED this the 27 day of August, 2001.

/s/ L. Breland Hilburn
CIRCUIT COURT JUDGE

Presented to the Court by:
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IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

JULIE MABUS — PLAINTIFF

V. — NO. 251-01-23

SAINT JAMES EPISCOPAL CHURCH,
REVEREND JERRY MCBRIDE,
EPISCOPAL DIOCESE OF
MISSISSIPPI — DEFENDANTS

****

TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN THE MOTION HEARING OF THE ABOVE STYLED AND NUMBERED CAUSE, BEFORE THE HONORABLE L. BRELAND HILBURN, CIRCUIT JUDGE, SOLE PRESIDING, ON THE 17TH DAY OF SEPTEMBER, 2001.

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* * *

[11] we were submitting that.

THE COURT: No, sir. I don't – that has never been my interpretation of the rule. I was just simply pointing out that there are times when public policy does require that there be controls on the – concerning separation of powers.

MR. ROSS: That's our first motion, Your Honor. I don't know if plaintiff has anything or not.

THE COURT: I am going to overrule the motion to reconsider.

MR. ROSS: Your Honor, our second motion goes to the issue of if there was some duty of confidentiality that existed at that meeting in January of 1998, did Mrs. Mabus waive that duty at a subsequent time or waive any rights to assert a violation of that duty. If I could approach, Your Honor.

Starting at the bottom of page 11. After this meeting in 1998 –

THE COURT: What is the – it is on here. I'm sorry. I see it. January 11?

MR. ROSS: Right.

After the meeting that was taped, Mr. Mabus and Mr. Mabus –

MS. NESTER: Excuse me. Excuse me, Mr. Ross. I am sorry to interrupt you. Judge, it may be – I think you are trying to argue

* * *

**IN THE CIRCUIT COURT OF
THE FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI**

JULIE MABUS **PLAINTIFF**

V. **CAUSE NO. 251-01-23CIV**

**ST. JAMES EPISCOPAL CHURCH,
EPISCOPAL DIOCESE OF MISSISSIPPI,
INC. JERRY MCBRIDE AND
JOHN DOES 1-10** **DEFENDANTS**

**ORDER DENYING CERTIFICATION OF
ORDER FOR INTERLOCUTORY APPEAL AND
STAY OF PROCEEDINGS**

THIS matter having come before this Court on the motion of the Episcopal Diocese of Mississippi, Inc., and St. James Episcopal Church, for Certification of Order for Interlocutory Appeal and Stay of proceedings, which Motion was joined by Jerry McBride, and after the Court fully reviewed said Motion, this Court is of the opinion that the Motion is not well taken and should be denied.

IT IS SO ORDERED that the Motion for Certification of Order for Interlocutory Appeal and for Stay of Proceedings in this matter brought before this Court on behalf of the Episcopal Diocese of Mississippi, Inc., and St. James Episocopal Church and joined by Jerry McBride is hereby denied.

SO ORDERED, THIS THE 18 day of Sept, 2001.

/s/ L. Breland Hilburn
Honorable L. Breland Hilburn

Prepared by:

/s/ Brenda Currie
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Serial: 91959

IN THE SUPREME COURT OF MISSISSIPPI

No. 2001-M-01558

JULIE MABUS

v.

ST. JAMES EPISCOPAL CHURCH, EPISCOPAL DIOCESE OF MISSISSIPPI, INC., JERRY MCBRIDE AND JOHN DOES 1-10

ORDER

(Filed Nov. 29, 2001)

This matter came before the Court sitting en banc on the Petition for Interlocutory Appeal filed by St. James Episcopal Church, the Episcopal Diocese of Mississippi, Inc., and Jerry McBride (Petitioners). The Court has also considered the Motion of Petitioners for Stay of Proceedings and Request for Expedited Consideration (Motion for Stay and Expedited Consideration), Julie Mabus' Response, and the Petitioners' Reply.

After due consideration, the Court finds that the Petition for Interlocutory Appeal should be denied. The Court further finds that the Motion for Stay and Expedited Consideration should be dismissed as moot.

IT IS THEREFORE ORDERED that the Petition for Interlocutory Appeal is denied.

IT IS FURTHER ORDERED that the Motion for Stay and Expedited Consideration is dismissed as moot.

SO ORDERED, this 29th day of November, 2001.

/s/ Chuck McRae
CHUCK MCRAE,
PRESIDING JUSTICE
FOR THE COURT

TO DENY: McRAE, P.J., DIAZ, EASLEY AND CARLSON, JJ.

TO GRANT: PITTMAN, C.J., WITH SEPARATE STATEMENT JOINED BY SMITH, P.J., WALLER AND COBB, JJ.

NOT PARTICIPATING: GRAVES, J.

PITTMAN, CHIEF JUSTICE, SEPARATE STATEMENT ON ORDER.

By today's evenly divided decision, the Court has declined to grant the interlocutory appeal sought by the petitioners and to stay proceedings in the trial court. I respectfully dissent from this result and write to explain my serious concerns.

Ms. Mabus has brought this action against not only Rev. McBride, but also against St. James Episcopal Church, the Episcopal Diocese of Mississippi, Inc. and ten unidentified parties who may include the priests and officials of the church and diocese. She alleges that Rev. McBride breached a fiduciary duty in participating in the audiotaping of her, his parishioner, during a counseling session and further alleges that the special relationship is grounded in his position as spiritual leader of the church.

She also alleges that the church and the diocese failed to appropriately and adequately train and supervise Rev. McBride. Rev. McBride, the church and the diocese filed this petition seeking interlocutory appeal from the decision of the trial court denying their motion to dismiss. It appears that now discovery, including depositions of several priests and the bishop, is underway.

The petition filed by the diocese and Rev. McBride argues that Mississippi does not impose duties on priests above those imposed on other citizens, and that to do so would violate the First Amendment of the United States Constitution. The Mississippi courts have never decided this question. Our case law shows a strong reluctance to intervene in church activities. For these reasons and others, an interlocutory appeal should be granted. Generally, because of First Amendment considerations, states will not recognize suits for malpractice against clergy. A recent article in the Indiana Law Journal summarizes this position.

> To date, in fact, every jurisdiction presented with the opportunity has refused to recognize [a cause of action for clergy malpractice], often because the issue of reasonableness – manifest as a "reasonably prudent clergy" standard – so starkly and unavoidably reeks of unconstitutional [church/state] entanglement. . . .
>
> Similar or analogous reasoning has led many (though not all) courts also to reject claims against religious defendants for breach of fiduciary duty, negligent hiring or retention or

> transfer, negligent supervision, tortious interference with contract, negligent infliction of emotional distress, and defamation or other tortuous [sic] speech.

Scott C. Idleman, *Tort Liability, Religious Entities, and the Decline of Constitutional Protection*, 75 Ind. L.J. 219, 232-234 (2000).

This important question remains open and undecided in Mississippi. This is certainly not just another defendant. We should not open the church and its priests and ministers to ordinary malpractice law suits. The order here entered allows the plaintiff to conduct discovery in regards to St. James Church activities, management and personnel, and further allows, without restraint, the plaintiff to employ discovery of the dioceses and its activities. No harm could come from allowing this Court to rule on the fundamental legal questions at this stage. Harm may result if the respondent is allowed to prowl the internal operations of this or any church in an action for which the law may ultimately be determined to offer no legal cause of action. An interlocutory appeal should be granted to first determine Mississippi's law with regard to the questions raised and to avoid possible harmful unrestricted discovery and depositions of church life.

SMITH, P.J., WALLER AND COBB, JJ., JOIN THIS SEPARATE STATEMENT

Serial: 92713

IN THE SUPREME COURT OF MISSISSIPPI

No. 2001-M-01558

JULIE MABUS

Plaintiff/Respondent

v.

ST. JAMES EPISCOPAL CHURCH, EPISCOPAL DIOCESE OF MISSISSIPPI, INC., JERRY MCBRIDE AND JOHN DOES 1-10

Defendants/Petitioners

ORDER

(Filed Jan. 07, 2002)

This matter came before the undersigned Justice on the Petitioners' Motion Pursuant to Rule 40 for Reconsideration, or In The Alternative, Pursuant to Rule 2 for Suspension of Rules ("Motion for Reconsideration"). Julie Mabus has filed a Response, which contains a request for attorney's fees for defense against the Motion for Reconsideration.

Petitioners seek reconsideration of this Court's Order handed down November 29, 2001, which denied the petition for interlocutory appeal. After due consideration, the undersigned Justice finds that the Motion for Reconsideration should be denied in accordance with M.R.A.P. 27(h). Julie Mabus's request for attorney's fees is not well taken and should be denied.

IT IS THEREFORE ORDERED that the Motion for Reconsideration is denied. Julie Mabus's request for attorney's fees is also denied.

SO ORDERED, this 7th day of January, 2002.

/s/ Chuck McRae
CHUCK MCRAE,
PRESIDING JUSTICE

United States Constitution

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment XIV, Section 1

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

IN THE CIRCUIT COURT OF THE
FIRST JUDICIAL DISTRICT
OF HINDS COUNTY, MISSISSIPPI

JULIE MABUS — PLAINTIFF

V. — CAUSE NO 251-01-23CIV

ST. JAMES EPISCOPAL CHURCH, EPISCOPAL DIOCESE OF MISSISSIPPI, INC., JERRY MCBRIDE and JOHN DOES 1-10. — DEFENDANTS

FIRST AMENDED COMPLAINT

(Filed March 30, 2001)

JURY TRIAL REQUESTED

COMES NOW Plaintiff, Julie Mabus, and files this her Complaint for damages against Defendants St. James Episcopal Church, Episcopal Diocese of Mississippi, Inc., Jerry McBride, and John Does 1-10, as follows:

PARTIES

1. Defendant St. James Episcopal Church (hereinafter referred to as "St. James") is a non-profit corporation doing business in the State of Mississippi and can be served with process of this Court by service upon Glover A. Russell, Jr., 200 S. Lamar St., Number 500, Jackson, Mississippi 39203.

2. Defendant Episcopal Diocese of Mississippi, Inc., (hereinafter referred to as "Diocese") is a Mississippi corporation licensed to do business and doing business in the State of Mississippi and can be served with process of

this Court by service upon its registered agent for process.

3. Defendant Jerry McBride is an adult resident citizen of the State of Mississippi.

4. Defendants John Does 1-10 are individuals and/or entities that may have contributed to the damages suffered by Plaintiff as described below and whose identities are unknown to Plaintiff at this time. Plaintiff hereby requests to amend this Complaint upon the discovery of said individuals.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the parties and over the subject matter herein.

6. Venue is proper in this Court in that Plaintiff's injuries occurred in the First Judicial District of Hinds County, Mississippi.

FACTS

7. On or about January 7, 1998, Plaintiff Julie Mabus agreed, at the request of her husband Ray Mabus, to attend a marital counseling session with her priest. Her priest was Father Jerry McBride, who was at all relevant times to this Complaint an ordained Episcopalian priest pastoring at St. James Episcopal Church in Jackson, Mississippi.

8. Julie Mabus was an active, lifelong member of St. James Episcopal Church, Father McBride officiated at her wedding and both of her children were baptized at St.

James Episcopal Church. Ray Mabus is not, and has never been, a member of St. James Episcopal Church, nor was he raised in the Episcopal religion. On information and belief, Ray Mabus had little or no formal religious beliefs, although after entering politics he has stated he was a Methodist.

9. St. James Episcopal Church was and is a parish under the control and supervision of and operating under the rules and regulations of the Episcopal Diocese of Mississippi, Inc.

10. Unbeknownst to Plaintiff, during the counseling session of January 7, 1998, Plaintiff's husband at the time, Ray Mabus, was surreptitiously audiotaping the counseling session. Father McBride had previously been told by Mr. Mabus that he would record the session without Mrs. Mabus's knowledge or consent. Furthermore, Father McBride knew of and condoned Mr. Mabus's plans to surreptitiously audiotape the session prior to its occurrence. Throughout the counseling session, Father McBridge never revealed to Mrs. Mabus that she was possibly being taped, even when he directed Mr. Mabus to leave the room, leading Julie Mabus to believe that their conversation was being held in confidence.

11. As a direct and proximate result of Father McBride's presence at the counseling session, Julie Mabus confided personal and confidential matters during the session. At all times during the session, Julie Mabus expected and believed that her comments to her priest, acting as a marital counselor, would remain privileged

and confidential. At no time prior to or during the counseling session did Julie Mabus consent to the recording of her statements.

12. Subsequent to the counseling session, Julie Mabus's private and confidential statements to her priest were disseminated by Father McBride to third parties, without Mrs. Mabus's consent, and were ultimately used against her in a custody proceeding resulting in her loss of the legal custody of her young children and loss of their physical custody for a period of six months every year.

13. At all times during the counseling session, Father McBride was acting in his official capacity as the Rector and spiritual leader of St. James Episcopal Church and as such, was an integral component of the church itself. To date, Julie Mabus cannot cope with the fact that she was ambushed and betrayed by her own church and Priest.

CAUSES OF ACTION

COUNT ONE: BREACH OF FIDUCIARY DUTY

14. Paragraphs 1-13 are incorporated herein.

15. Father McBride's position as priest of St. James Episcopal Church placed him in a special relationship of trust and faith with his parishioners.

16. At all times relevant to this Complaint, Father McBride had a duty and obligation to his parishioners to maintain and respect the privacy and confidentiality of their confessions and/or communications.

17. Father McBride's knowing participation in the surreptitious audiotaping of his parishioner, for purposes to her detriment, during a confidential counseling session constituted a breach of his fiduciary duty to Julie Mabus.

18. At all times that Father McBride was breaching his fiduciary duty to Julie Mabus, he was acting as the spiritual leader of St. James Episcopal Church in furtherance of the goals and interests of Defendant St. James and/or Defendant Diocese.

COUNT TWO: FRAUDULENT CONCEALMENT

19. Paragraphs 1-18 are incorporated herein.

20. Father McBride knowingly concealed material facts from Julie Mabus; specifically that she was being audiotaped, in order to induce her to reveal personal and private matters in a confidential counseling session. Father McBride concealed these facts knowing that Julie Mabus would rely on his representations to her detriment.

21. At all times that Father McBride was fraudulently concealing facts from Julie Mabus, he was acting as the spiritual leader of St. James Episcopal Church in furtherance of the goals and interests of Defendant St. James and/or Defendant Diocese.

COUNT THREE: NEGLIGENT MISREPRESENTATION

22. Paragraphs 1-21 are incorporated herein.

23. Father Jerry McBride, acting in his capacity as spiritual leader of St. James Episcopal Church, misrepresented a material fact to Julie Mabus. Specifically, Julie Mabus was led to believe that when Father McBride asked Ray Mabus to leave the room so that Father McBride could talk privately with Julie Mabus that they were, in fact, speaking privately.

24. Father McBride failed to exercise a reasonable degree of care and/or diligence to determine whether or not Julie Mabus had been informed she was being surreptitiously recorded during the counseling session.

25. Julie Mabus relied, to her shock and detriment, on Father McBride's misrepresentations of fact and suffered damages as a result of her reasonable reliance on said misrepresentations. Therefore, Father McBride committed the tort of negligent misrepresentation.

26. At all times that Father McBride was misrepresenting facts to Julie Mabus, he was acting as the spiritual leader of St. James Episcopal Church and in accordance with the Cannons of the Episcopal religion and in furtherance of the goals and interests of Defendant St. James and Defendant Diocese.

COUNT FOUR: INVASION OF PRIVACY

27. Paragraphs 1-26 are incorporated herein.

28. Father McBride's knowing participation in the recording of Julie Mabus's private confessions/communications foreseeably enabled the public release of Mrs. Mabus's most intimate matters, without her consent.

29. This public release of private information constituted an invasion of Julie Mabus's privacy.

30. At all times that Father McBride was invading Julie Mabus's privacy, he was acting as the spiritual leader of St. James Episcopal Church and in the furtherance of the goals and interests of Defendant St. James and/or Defendant Diocese.

COUNT FIVE: NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

31. Paragraphs 1-30 are incorporated herein.

32. Father McBride's act of participating in a surreptitious tape-recording of a religious counseling session, when he knew or should have known that the tape-recording was for purposes that would harm Mrs. Mabus's interests, negligently inflicted emotional anguish and distress upon Mrs. Mabus.

33. At all times that Father McBride was negligently inflicting emotional distress, he was acting as the spiritual leader of St. James Episcopal Church and in the furtherance of the goals and interests of Defendant St. James and/or Defendant Diocese.

COUNT SIX: NEGLIGENT RETENTION/SUPERVISION

34. Paragraphs 1-33 are incorporated herein.

35. Defendants St. James and Diocese knew or should have known that they were inadequately training and supervising Father Jerry McBride.

36. Defendants St. James and Diocese knew or should have known that Father Jerry McBride could not be trusted to follow the Cannons of the Episcopal religion and maintain the confidence and/or trust of parishioners.

37. Despite Defendants' St. James and Diocese's knowledge, they failed to take appropriate steps to supervise Father McBride's interaction with parishioners and they continued to enable his service as the spiritual leader of St. James Episcopal Church at the risk and peril of the privacy of their parishioners.

COUNT SEVEN: CLERGY MALPRACTICE

38. Paragraphs 1-37 are incorporated herein.

39. Father McBride, Defendant St. James and Defendant Diocese took steps to encourage their parishioners to engage in marital counseling services with the ordained priests, including Father McBride. These priests, including Father McBride, were provided with specialized training and standards of care in the area of counseling so that they could meet the needs of troubled parishioners.

40. Father McBride's acts in violating the trust and confidentiality of a parishioner by permitting surreptitious taping of a confidential counseling session by a

third party and his failure to address the parishioner's distress resulting from the priest's betrayal violated the generally accepted standards of care adopted by clergy professionals and constituted clergy malpractice.

41. Defendants St. James' and Diocese's failure to appropriately and adequately train and/or supervise their priests acting as marital counselors and their failure to address Julie Mabus's complaints of betrayal by her priest also violated generally accepted standards of care and constituted clergy malpractice.

DAMAGES

42. As a direct and proximate result of Defendants' wrongful conduct described in paragraphs 7-41 above, Julie Mabus suffered damages including but not limited to:

a) Costs of medical care and counseling in an amount exceeding $10,000.00,

b) Extreme emotional distress and mental anguish resulting from her loss of her life-long belief in her religion and church based on her priest's betrayal in the ambush, which she also perceived to be a cause in the loss of the custody of her children,

c) Damage to reputation,

d) Great personal humiliation and embarrassment, and

e) Lost sources of income.

43) Because Defendants' actions were reckless and/or intentional and malicious, Julie Mabus requests punitive damages to punish Defendants' outrageous behavior and to deter future similar conduct from Defendants or others similarly situated to them.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Julie Mabus sues and demands judgment of and from the defendants, jointly and severally, for actual, compensatory, general, incidental and consequential damages in an amount exceeding the minimum jurisdictional limits of this Court to be determined at trial, which will reasonably compensate the plaintiff for her damages suffered as a proximate result of defendants' wrongful conduct toward her, prejudgment and postjudgment interest, costs and any other damages to which she is entitled under the law. Furthermore, Plaintiff prays that the defendants, jointly and severally, be required to pay the plaintiff punitive damages, to be determined and assessed at trial, in an amount sufficient to punish the defendants for committing the same misconduct, or misconduct similar to, that of which Plaintiff complains herein and which will reasonably prevent and deter the defendants and others similarly situated, from engaging in such misconduct in the future.

Respectfully submitted,

JULIE MABUS, PLAINTIFF

BY: /s/ Kathryn N. Nester
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IN THE CIRCUIT COURT OF THE
FIRST JUDICIAL DISTRICT

OF HINDS COUNTY, MISSISSIPPI

JULIE MABUS — PLAINTIFF

VERSUS — NO. 251-01-023

ST. JAMES EPISCOPAL CHURCH, EPISCOPAL DIOCESE OF MISSISSIPPI, INC., JERRY MCBRIDE AND JOHN DOES 1-10 — DEFENDANTS

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TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN THE MOTION TO DISMISS OF THE ABOVE STYLED AND NUMBERED CAUSE BEFORE THE HONORABLE L. BRELAND HILBURN, CIRCUIT COURT JUDGE, ON THE 15TH DAY OF AUGUST, 2001.

****

* * *

[38] was tortious and that for some reason that puts a higher standard on Reverend McBride than the average person.

Your Honor, we're clearly not suggesting just the taping was tortious. If the priest and Julie Mabus met in his chambers and had a conversation and he taped it and locked it in his drawer, there would never be a case here. That's not the issue.

The issue is that what was behind the taping, an intent to disclose and, in fact, a later disclosure by both Ray Mabus and Reverend McBride which we have alleged in our complaint which the Court must take as true.

They've suggested to the Court that if a neighbor or a friend had been at that meeting that there would be no case here. We certainly agree with that.

However, if her lawyer had been there, there would be a case here. If her accountant, her banker, any other person who had a special duty of trust was at that meeting, there would certainly be a case here. There was no reason under the law or authority under the law to exempt priests from the same requirements once they enter into this

* * *

[45] a question of fact, and we establish that by them calling their witnesses up there and saying, oh, whether or not to reveal the confidences of a confession, that's purely a church matter, and then we call experts that get up there, Episcopalian experts that understand and are familiar with their doctrines, and say, well, no actually, it's just the opposite, and then the jury goes off and decides the question of fact. So, once again, we have another question of fact where a motion to dismiss is not proper.

And I want to be clear. The main reason the First Amendment doesn't apply here is because everything we alleged in that complaint, not one thing involves their religious interpretation. I mean that's just clear-cut. It doesn't get any simpler than that.

Now, Charlie Ross made this very dramatic point about and, as you know, Your Honor, the court cannot get into church rules, and the point I'd like to make is the church is not above the law. The court can get into church

rules if it does not involve fundamental investigations into religious doctrine.

They do it all the time. They've

* * *

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August 27, 2001

Honorable Charles E. Ross
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Jackson, MS 39201

Re: Julie Mabus v. St. James Episcopal Church, et al.

Dear Counsel:

Today we received Judge Hilburn's signed order lifting the stay of discovery in our case. Therefore, we intend to propound our written discovery requests very soon. We would like to go ahead and clear some deposition dates now that are far enough away to allow us to receive our written discovery responses first. Charlie Ross, Bryan Buckley and I are all available on the following dates: October 31 and November 1, 2, 12, 13. We have left a message for Roe Frazer, Esq., to discuss whether Governor Mabus would be available on any of these dates and I am also sending Roe a copy of this letter. Please let me

know as soon as possible which of these dates you would be available so we can keep these dates clear on our calendars. As of right now, we intend to depose the following individuals: Governor Mabus, Jerry McBride, Rev. Buddy Stallings, Rev. Susan Boch, Bishop Marble, Rev. Molly McBride, James Holland, Esq., Wood Hiatt.

Judge Hilburn requested that we draft an agreed scheduling order. I will be happy to draft it once we agree on some firm deposition dates. I will propose a motion deadline that falls a few weeks after discovery is completed. I will also be pleased to get available trial dates from Jamie for you to review. I look forward to hearing from you all soon.

Sincerely,

/s/ Kathryn N. Nester
Kathryn N. Nester

Cc: Roe Frazer, Esq.
Jane E. Tucker, Esq.
Bryan P. Buckley, Esq.
Richard Halpern
Ms. Julie Mabus

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December 18, 2001

Honorable Charles E. Ross
Wise Carter Child & Caraway
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Jackson, MS 39205-0651

Re: Julie Mabus v. St. James Episcopal Church, et al.

Dear Senator Ross:

Please provide my office at your earliest convenience with available dates for the taking of depositions of Bishop Marble, Buddy Stallings and whoever was the head of the vestry during the years of 1998, 1999, 2000. I await a reply from you.

Sincerely yours,

/s/ Kathryn N. Nester
Kathryn N. Nester

KNN/dje
Cc: Robert Malouf, Esq.
Dorrance Aultman, Esq.
Bryan Buckley, Esq.
Ms. Julie Mabus